

Legislative Analysis



REQUIRE DEFENDANT TO REMAIN PRESENT DURING VICTIM IMPACT STATEMENT

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House Bill 5407 as enacted
Public Act 153 of 2018
Sponsor: Rep. Holly Hughes
House Committee: Law and Justice
Senate Committee: Judiciary
Complete to 6-20-18

BRIEF SUMMARY: House Bill 5407 would amend the William Van Regenmorter Crime Victim's Rights Act to require that a defendant be physically present during victim impact statements at a sentencing hearing. The bill would also require that a juvenile defendant be physically present during victim impact statements at a disposition or sentencing hearing. These requirements would be referred to as the "Rebekah Bletsch Law."

FISCAL IMPACT: House Bill 5407 would have no fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

In December 2017, a defendant was convicted for Rebekah Bletsch's 2014 murder. When Bletsch's family was ready to give their victim impact statements, as allowed under the William Van Regenmorter Crime Victim's Rights Act, the defendant requested to leave the courtroom. The judge concluded that while the defendant has the right to be present during sentencing, there was no law actually requiring him to be there, and so the request was granted. The bill would add a provision in the law to specifically require a defendant's presence in the courtroom during victim impact statements.

THE CONTENT OF THE BILL:

Currently, a victim has the right to appear and make an oral impact statement at the sentencing of a defendant, as well as at the disposition or sentencing of a juvenile defendant. The bill would require that a defendant, including a juvenile defendant, be *physically* present in the courtroom when a victim makes an oral impact statement.

A defendant would not be required to be physically present *only if* the court determines that the defendant is behaving in a disruptive manner or presents a threat to the safety of any individuals present in the courtroom. To make this determination, the court could consider any relevant statement provided by the victim regarding the defendant's being physically present during that victim's oral impact statement.

This new provision would apply to cases in which the sentencing of the defendant occurs on or after the bill's effective date.

ARGUMENTS:

For:

Supporters of the bill argue that those affected by crime deserve a voice and a chance to heal, which is the very point of the William Van Regenmorter Crime Victim's Rights Act. However, they effectively have no voice and cannot heal if the defendant is not there to hear them. The Bletsch family testified during committee hearings that their voice and chance to heal was taken from them, as their victim impact statements were directed at an empty chair.

Against:

Concerns were raised regarding the constitutionality of requiring a defendant to be present during sentencing if the defendant is allowed to waive his or her right to be present at that hearing.

Another concern raised during committee deliberations was that, if a defendant is forced to stay and only allowed to leave if he or she is being disruptive or harmful, the defendant is more likely to be disruptive and harmful. Critics of the bill would like to see this language changed to ensure safer courtrooms.

Finally, opponents of the bill argue that the bill conflicts with current juvenile procedures, which allow a juvenile defendant to attend his or her own sentencing hearing via videoconference.

Response:

Supporters of the bill responded to opponents' concerns by pointing out that victims have rights under the state constitution, too, and that the legislature may make laws to be sure the victim's voice is heard.¹ Allowing a defendant to leave the courtroom during victim impact statements gives the defendant more rights than his or her victim.

Additionally, proponents of the bill argue that the Supreme Court of the United States ruled in 1965 that, although defendants have a constitutional right to be present during sentencing, that right does not therefore apply to not being present. Likewise, defendants can waive their right to a public trial, but they do not have the right to have a private trial.²

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

¹ Article I, § 24, Rights of crime victims; enforcement; assessment against convicted defendants.

² *Singer v US*, 380 US 24, 34-35.